

SYNOPSIS

Administrative Rules for Certificate of Need Appeal Panel

Rule 274-1-.11

Decision of Hearing Officer

STATEMENT OF PURPOSE AND MAIN FEATURES OF PROPOSED RULE

The purpose of the proposed amendments in totality is to modify existing regulations in light of changes in the Certificate of Need statute, O.C.G.A. § 31-6 et seq., due to the passage of Senate Bill (SB) 433 in the 2008 Georgia General Assembly. SB 433 necessitates revision to the existing administrative rules for administrative appeals of certificate of need decisions. SB 433 abolished the previous Health Planning Review Board and created the Certificate of Need (CON) Appeal Panel. O.C.G.A. 31-6-44 and 31-6-44.1. The revisions are outlined in detail below.

DIFFERENCES BETWEEN EXISTING AND PROPOSED RULES

This rule is amended to reflect new provisions governing the hearing officer decision issued by a member of the CON Appeal Panel.

274-1-~~10.11~~ Decision of Hearing Officer.

(1) Within thirty (30) days after the conclusion of the hearing, the hearing officer shall make written findings of fact and conclusions of law as to each consideration as set forth in O.C.G.A. § 31-6-42 and the Department's Rules, including a detailed statement of the reasons for the decision of the hearing officer. ~~;~~ ~~provided, however, t~~
The hearing officer may, by order, extend the period in which the decision must be made upon a determination that the complexity of the issues and/or the length of a record requires such extension of the period, but in no event may such extension exceed an additional fifteen (15) days.

(2) If any party has alleged that an appeal lacks substantial justification ~~and or~~ was undertaken solely primarily for the purpose of delay or harassment, the decision of the hearing officer shall make findings of fact addressing the merits of the allegation pursuant to O.C.G.A. § 31-6-44(i).

(3) The conclusion of the hearing is deemed to be the last date for submission of written evidence, proposed findings and conclusions, written arguments, or other materials, as fixed by the hearing officer.

(4) In the event of a consolidated hearing on applications which were joined for comparative review pursuant to ~~subsection (d) of~~ O.C.G.A. § 31-6-43(f), the hearing officer shall have the same powers specified for the Department in ~~subsection (d) of~~ O.C.G.A. § 31-6-43(f) to order the issuance of no Certificate of Need or one or more Certificates of Need.

(5) Notice of the decision is deemed to be issued on the day that it is signed by the hearing officer and sent with a Certificate of Service to all parties via the method chosen by the hearing officer.

(6) Immediately upon rendering a decision, the hearing officer shall file such decision with the ~~Board Chairperson of the Appeal Panel who shall,~~ serve such decision upon all parties by regular mail, and shall transmit the administrative record to the ~~Chairperson of the Board Commissioner.~~ The hearing officer shall file the decision with the Board Chairperson at the Office of General Counsel, Division of Health Planning, Department of Community Health, 2 Peachtree Street, N.W., 5th Floor, Atlanta, Georgia 30303, ~~and shall also mail copies of the decision to the Chairperson and Vice Chairperson at their respective addresses.~~ The Board Chairperson shall have been deemed in receipt of the hearing officer's decision on the date that the decision actually arrives at the required address.

(7) The hearing officer may remand ~~the a~~ matter to the Department ~~for further review and consideration prior to the decision of the hearing officer, and the Department shall complete the action required on remand by such date as the hearing officer may specify. The hearing officer may hold the record open as necessary to permit the hearing officer to consider the action taken by the Department. if the hearing officer determines that it would be beneficial for the Department to consider new data, studies, or analyses that were not available before the decision or changes to the provisions of the applicable considerations or rules made after the Department's decision. The hearing officer shall establish the time deadlines for completion of the remand and shall retain jurisdiction of the matter throughout the completion of the remand.~~

(8) Notice of the decision shall include, in addition to findings of fact and conclusions of law, instructions to the Department as to granting or denying a Certificate of Need.

Authority: O.C.G.A. § 31-6-44.